

### **REMARKS**

This response is intended as a full and complete response to the Advisory Action mailed January 17, 2007. In the Office Action, the Examiner notes that claims 1-20 are pending and rejected. By this response, Applicant has amended claims 1-4 and 6. The support for the amendment can be found in the priority document 09/991,074 on page 109, lines 4-8.

In view of both the amendments presented above and the following discussion, Applicant submits that none of the claims now pending in the application are obvious under the provisions of 35 U.S.C. §103. Thus, Applicant believes that all of the claims are now in allowable form.

It is to be understood that Applicant, by amending the claims, does not acquiesce to the Examiner's characterizations of the art of record or to Applicant's subject matter recited in the pending claims. Further, Applicant is not acquiescing to the Examiner's statements as to the applicability of the prior art of record to the pending claims by filing the instant response including amendments.

### **35 U.S.C. §103 Rejection of Claims 1-20**

Claims 1-20 are rejected under 35 U.S.C. §103(a) as being unpatentable over Strubbe (5,223,924, hereinafter "Strubbe '924) in view of McMullan, Jr. (5,251,324, hereinafter "McMullan"). The rejection is traversed.

The test under 35 U.S.C. §103 is not whether an improvement or a use set forth in a patent would have been obvious or non-obvious; rather the test is whether the claimed invention, considered as a whole, would have been obvious. Jones v. Hardy, 110 USPQ 1021, 1024 (Fed. Cir. 1984) (emphasis added). Thus, it is impermissible to focus either on the "gist" or "core" of the invention, Bausch & Lomb, Inc. v. Barnes-Hind/Hydrocurve, Inc., 230 USPQ 416, 420 (Fed. Cir. 1986) (emphasis added). Moreover, the invention as a whole is not restricted to the specific subject matter claimed, but also embraces its properties and the problem it solves. In re Wright, 6 USPQ 2d 1959, 1961 (Fed. Cir. 1988). The Strubbe '924 and McMullan references

alone or in any permissible combination fail to teach or suggest Applicant's invention as a whole.

Applicant's amended claim 1 recites:

1. A set top terminal for generating an interactive electronic program guide for display on a television connected to the set top terminal, the terminal comprising:
  - means for retrieving a first user information associated with a first subscriber and a second user information associated with a second subscriber;
  - means for receiving a television signal;
  - means for extracting individual programs from the television signal;
  - means for generating an electronic program guide for controlling display of content on a television screen, the guide comprising:
    - a favorites menu including names of programs available for selection, wherein the programs included in the favorites menu are based on the first and second user information; and
    - means for receiving selection signals from a user input. (Emphasis added.)

Strubbe '924 fails to teach or suggest at least "means for retrieving a first user information associated with a first subscriber and a second user information associated with a second subscriber" and "means for generating an electronic program guide comprising a favorites menu including names of programs available for selection, wherein the programs included in the favorites menu are based on the first and second user information", as recited in claim 1.

Strubbe '924 discloses a user interface which can access downloaded TV program information and automatically correlate this information with the preferences of the user, to create and display at least one program information database based upon the results of the correlation. Strubbe '924 is silent with respect to a methodology to suggest programs for two viewers. Specifically, Strubbe '924 does not teach or suggest means for retrieving a first user information associated with a first subscriber and a second user information associated with a second subscriber. The Examiner concedes this in the Final Office Action. (See Final Office Action, p. 6, ll. 1-2.) However, the Examiner alleges that McMullan bridges the substantial gap left by Strubbe.

McMullan fails to bridge the substantial gap between Strubbe '924 and Applicant's claimed invention of at least claim 1. The Examiner alleges that McMullen teaches wherein the system can utilize separate profiles for each viewer. (See Advisory Action, p. 2, ll. 3-5.) The Applicant respectfully submits that contrary to the Examiner's interpretation, McMullen only teaches that individual profiles may be taken. McMullen fails to specifically teach the individual profiles may be used jointly. Rather, McMullen only teaches that the individual profiles are used with other individual profiles to determine an audience type for a television program. (See McMullen, col. 25, ll. 63-68.) McMullen does not teach or suggest that the individual user profiles are used for generating an electronic program guide comprising a favorites menu including names of programs available for selection, wherein the programs included in the favorites menu are based on the first and second user information, as positively claimed by the Applicant's invention.

In stark contrast, McMullen provides an alternative method for obtaining profiles of multiple people via a specific remote terminal. (See McMullen, col. 26, ll. 1-15.) McMullen specifically teaches "[s]ubscriber profile data relating to a specific remote terminal, as opposed to an individual viewer, could be used to determine the viewing patterns of a household, rather than an individual viewer." (See *Id.*, emphasis added.) Clearly the passage cited in McMullen by the Examiner applies only to a single viewer. In light of McMullen's teachings, to obtain viewing patterns of multiple persons, McMullen teaches using profile data of a specific remote terminal.

In contrast, Applicant's invention teaches, for example, obtaining two sets of viewer profiles (i.e., a first user information associated with a first subscriber and a second user information associated with a second subscriber). Consequently, the matching algorithm of the Applicant's invention may provide a more accurate menu of programs for joint viewing than McMullan because in an exemplary embodiment of the Applicant's invention provides a means for retrieving a first user information associated with a first subscriber and a second user information associated with a second subscriber.

To illustrate the potential lack of accuracy in McMullan, using McMullan's method of profiling a specific remote terminal, the profile may be skewed by a single user who overly uses the remote terminal and may not accurately reflect the preferences of current viewers using the remote terminal. As a result, the combination of McMullan and Strubbe '924 fail to teach or to suggest Applicant's claimed "means for retrieving a first user information associated with a first subscriber and a second user information associated with a second subscriber" and "means for generating an electronic program guide comprising a favorites menu including names of programs available for selection, wherein the programs included in the favorites menu are based on the first and second user information".

The Examiner is reminded that the prior art must be read as a whole. Therefore, McMullen clearly fails to teach or suggest at least the limitation of means for generating an electronic program guide comprising a favorites menu including names of programs available for selection, wherein the programs included in the favorites menu are based on the first and second user information because McMullen fails to teach that multiple individual user profiles are used jointly and McMullen specifically teaches that profiles of a specific remote terminal are used to determine viewing patterns of multiple people.

Independent claims 7 and 16 recite relevant limitations similar to those recited in independent claim 1. Accordingly, for at least the same reasons discussed above, independent claims 7 and 16 also are patentable over Strubbe in view of McMullan under 35 U.S.C. §103(a).

Furthermore, Claims 2-6, 8-15 and 17-20 depend, directly or indirectly from independent claims 1, 7 and 16, while adding additional elements. Therefore, these dependent claims also are patentable over Strubbe '924 and McMullan under 35 U.S.C. §103 for at least the same reasons discussed above in regards to independent claims 1, 7 and 16. Therefore, Applicant respectfully requests that the Examiner's rejection be withdrawn.


**CONCLUSION**

Thus, Applicant submits that none of the claims, presently in the application, are obvious under the provisions of 35 U.S.C. §103. Accordingly, both reconsideration of this application and its swift passage to issue are earnestly solicited.

If, however, the Examiner believes that there are any unresolved issues requiring adverse final action in any of the claims now pending in the application, it is requested that the Examiner telephone Eamon J. Wall or Jimmy Kim, at (732) 530-9404, so that appropriate arrangements can be made for resolving such issues as expeditiously as possible.

Respectfully submitted,

Dated: 2/1/07

  
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